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Guy M. Hicks

General Counsel

September 12, 2003

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VIA HAND DELIVERY

Hon. Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Joint Application of NOW Acquisition Corporation for Authority to
Acquire Certain Assets of NOW Communications, Inc.*
Docket No. 03-00454

Dear Chairman Tate:

Enclosed are the original and fourteen copies of BellSouth's Petition to Intervene.
Copies of the enclosed are being provided to counsel of record.

Very truly yours,

Guy M. Hicks

GMH:ch

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *Joint Application of NOW Acquisition Corporation for Authority to
Acquire Certain Assets of NOW Communications, Inc.*

Docket No. 03-00454

PETITION OF BELL SOUTH TELECOMMUNICATIONS, INC.
FOR LEAVE TO INTERVENE

BellSouth Telecommunications, Inc. ("BellSouth"), pursuant to T.C.A. §4-5-310 and T.C.A. §65-2-107, petitions the Tennessee Regulatory Authority (the "Authority") for leave to intervene in the above-captioned proceeding, and in support thereof states as follows:

1. Petitioner, a Georgia Corporation authorized to conduct and conducting a public utility business in the state of Tennessee, is engaged in furnishing exchange telephone service and intrastate (long distance) intraLATA telephone service in the state of Tennessee subject to the jurisdiction of the Authority and pursuant to T.C.A. §65-4-101 and T.C.A. §65-5-201, *et seq.*

2. On July 15, 2003, NOW Acquisition Corporation ("NAC") filed an application with the Authority for a Certificate of Convenience and Necessity ("CCN") to provide competing local telecommunications services within the state of Tennessee. On August 1, 2003, the Authority Staff issued a data request relating to NAC's ability to demonstrate its managerial, financial and technical abilities to provide the services for which it seeks authority. According to

information on the Authority's website, NAC has filed three responses to the Staff questions, all of which NAC claims are comprised of proprietary information.

3. Concurrently, NAC and NOW Communications, Inc. ("NOW") filed a joint application with the Authority for NAC to acquire the assets of NOW, including, but not limited to, the customer base of NOW. That application was filed July 28, 2003. It is BellSouth's understanding, based on information on the Authority's website, that no action has yet been taken on that application by the Authority.

4. NAC's application for a CCN and the joint application of NOW and NAC to transfer assets are interrelated as explained below. On May 23, 2003, NOW filed a *Motion to Sell Substantially All of its Assets Pursuant to 11 U.S.C. Section 363(b) and (f), Free and Clear of All Claims and Liens* (the "Sale Motion") with the United States Bankruptcy Court for the Southern District of Mississippi, Jackson Division (Case No. 03-01336-JEE). BellSouth is owed approximately five million dollars by NOW and has filed an objection to NOW's Sale Motion with the Bankruptcy Court.

5. BellSouth objects to NAC seeking a CCN to provide competing local telecommunication services. NOW filed for bankruptcy protection under Chapter 11 of the U.S. Bankruptcy Code on March 4, 2003, and its bankruptcy proceeding is still pending. Any request for NAC to acquire any of the assets of NOW prior to the Bankruptcy Court ruling upon whether NOW may consummate such "asset transfers" is clearly premature. Motions challenging the Sale Motion are pending in

the Bankruptcy Court.¹ Moreover, NAC does not have an interconnection agreement with BellSouth, and, therefore could not serve customers within the state of Tennessee during the period of time prior to the consummation of the proposed transaction by which NAC now is attempting to acquire NOW's customer base in Tennessee.

6. It is clear that the joint request to acquire assets, as well as NAC's Request for a CCN, are simply a continuation of NAC's efforts to avoid NOW's obligation under § 365 of the Bankruptcy Code to assume the interconnection agreement with BellSouth and have it assigned to NAC. Any such assumption and assignment require curing the substantial indebtedness owed to BellSouth by NOW.²

7. On July 23, 2003, BellSouth filed motions in the bankruptcy proceeding which may affect the proposed transaction between NOW and NAC. Those motions have not yet been ruled upon by the Bankruptcy Court, which has set two of the motions for hearing, together with a hearing on NOW's Sale Motion, for October 1, 2003.

8. BellSouth's legal interests may be determined in this proceeding and its interests will not be adequately represented unless the Authority allows BellSouth to intervene.

¹ In the Bankruptcy proceeding, NOW is seeking to sell substantially all of its assets to MCG Capital Corporation or its designee. BellSouth understands that such designee may be NAC.

² Federal bankruptcy law requires that an executory contract, such as the interconnection agreement between NOW and BellSouth, may only be assumed or assigned to another party if all defaults under the interconnection agreement (i.e., the amounts owed) are promptly satisfied and adequate assurance of future performance by the assignee is provided. (See § 361 of Title 11, U.S.C.)

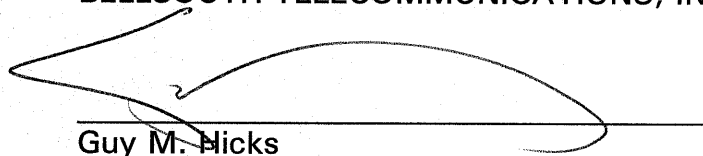
9. Allowing BellSouth to intervene will not impair the interests of justice or the orderly and prompt conduct of this proceeding.

10. BellSouth requests that it be granted leave to intervene and participate as a party in the above-captioned proceeding.

WHEREFORE, for the reasons set forth above, BellSouth respectfully urges the Authority to grant its Petition for Intervention and to assign this matter to a pre-hearing officer so that a procedural schedule may be established.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Guy M. Hicks", is written over a horizontal line. The signature is stylized with a large, sweeping loop.

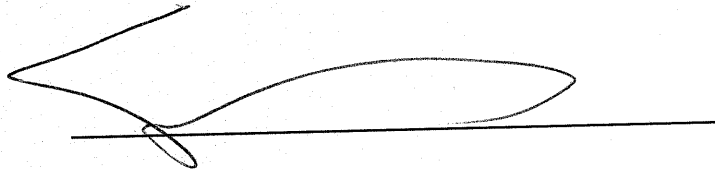
Guy M. Hicks
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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2003, a copy of the foregoing document was served on the parties of record, via the method indicated:

- ☐ Hand
- ☒ Mail
- ☐ Facsimile
- ☐ Overnight

Patrick D. Crocker
Early, Lennon, et al.
900 Comerica Building
Kalamazoo, MI 49007-4752

A handwritten signature in black ink, appearing to read 'Patrick D. Crocker', is written over a horizontal line.